

**ASSEMBLY BILL**

**No. 2957**

**Introduced by Assembly Member Koretz**

February 25, 2002

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An act to add Chapter 4 (commencing with Section 1400) to Part 4 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2957, as introduced, Koretz. Employment: mass layoffs, relocations, and terminations.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would preclude employers from ordering a mass layoff, relocation, or termination, as defined, of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies.

This bill would further provide for civil penalties against an employee who fails to provide the required notices. Employees who bring a civil action to enforce the provisions of this bill would, at the discretion of the court, be entitled to recover attorney's fees. The court would also have discretion to reduce the amount of an employer's liability if the employer acted in good faith and had reasonable grounds to believe that it was not violating the law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 4 (commencing with Section 1400) is added to Part 4 of Division 2 of the Labor Code, to read:

CHAPTER 4. RELOCATIONS, TERMINATIONS, AND MASS LAYOFFS

1400. The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

(a) "Covered establishment" means any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 50 or more persons.

(b) "Employer" means any person, as defined by Section 18, who directly or indirectly owns and operates a covered establishment. A parent corporation is an employer as to any covered establishment directly owned and operated by its corporate subsidiary.

(c) "Layoff" means a separation from a position for lack of funds or lack of work.

(d) "Mass layoff" means a layoff during any 30-day period of 50 or more employees, or 33 percent or more of the employees, at a covered establishment.

(e) "Relocation" means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a new location 100 miles or more away.

(f) "Termination" means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

1401. (a) An employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order to the following:

(1) The employees of the covered establishment affected by the order.

(2) The Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government affected by the order.

(b) An employer required to give notice of any mass layoff, relocation, or termination under this chapter and the federal Worker Adjustment and Restraining Notification Act (29 U.S.C.

1 Sec. 2101 et seq.) may utilize the form required by the federal act  
2 to give notice under this chapter.

3 (c) Notwithstanding the requirements of subdivision (a), an  
4 employee is not required to provide notice if a mass layoff,  
5 relocation, or termination is necessitated by a physical calamity or  
6 other unforeseeable circumstance.

7 1402. (a) An employer who fails to give notice as required by  
8 paragraph (1) of subdivision (a) of Section 1401 before ordering  
9 a mass layoff, relocation, or termination shall be liable to each  
10 employee entitled to notice who lost his or her employment for:

11 (1) Back pay at the average regular rate of compensation  
12 received by the employee during the last three years of his or her  
13 employment, or the employee's final rate of compensation,  
14 whichever is higher.

15 (2) Benefits under any employee benefit plan to which the  
16 employee would have been entitled had his or her employment not  
17 been lost, including the cost of any medical expenses incurred by  
18 the employee that would have been covered under an employee  
19 benefit plan.

20 (b) Liability under this section shall be calculated for the period  
21 of the employer's violation, up to a maximum of 60 days, or  
22 one-half the number of days that the employee was employed by  
23 the employer, whichever period is smaller.

24 (c) The amount of an employer's liability under subdivision (a)  
25 shall be reduced by the following:

26 (1) Any wages paid by the employer to the employee during the  
27 period of the employer's violation.

28 (2) Any voluntary and unconditional payments made by the  
29 employer to the employer that were not required to satisfy any  
30 legal obligation.

31 (3) Any payments by the employer to a third party or trustee,  
32 such as premiums for health benefits or payments to a defined  
33 contribution pension plan, on behalf of and attributable to the  
34 employee for the period of the violation.

35 (d) An employer may reduce a liability incurred under this  
36 section with respect to a defined benefit pension plan by crediting  
37 the employee with service for all purposes under such a plan for  
38 the period of the violation.

39 1403. An employer who fails to give notice as required by  
40 paragraph (2) of subdivision (a) of Section 1401 shall be subject

1 to a civil penalty of not more than five hundred dollars (\$500) for  
2 each day of the employer's violation. The employer shall not be  
3 subject to a civil penalty under this section, however, if the  
4 employer pays to all applicable employees the amounts for which  
5 the employee is liable under section 1402.

6 1404. A person seeking to establish liability against an  
7 employer, including a local government or an employee  
8 representative, may bring a civil action on behalf of such person,  
9 other persons similarly situated or both, in any court of competent  
10 jurisdiction. The court may award reasonable attorney's fees as  
11 part of costs to any plaintiff who prevails in a civil action brought  
12 under this chapter.

13 1405. If the court determines that an employer acted in good  
14 faith, having reasonable grounds to believe that its conduct was not  
15 a violation of this chapter, the court may reduce the amount of any  
16 penalty or liability of penalty imposed against the employer under  
17 this chapter.

18 1406. In any investigation or proceeding under this chapter,  
19 the Labor Commissioner shall have, in addition to all other powers  
20 granted by law, the authority to examine the books and records of  
21 an employer.

